

REMARKS/ARGUMENTS

These remarks are responsive to the Non-Final Office Action ("Office Action") mailed on April 1, 2009. In this response, claims 27-32 have been added and claims 1, 5-7, 11-13, 17, and 18 have been cancelled without prejudice. No new matter has been added. Entry of the addition of claims 27-32 and the cancellation of claims 1, 5-7, 11-13, 17, and 18 without prejudice is respectfully requested. Reconsideration of the current rejection in the present application is also respectfully requested based on the following remarks.

I. THE EXAMINER INTERVIEW

At the outset, the undersigned thanks the Examiner for the courtesies extended during the interview conducted on June 23, 2009, during which the Applicant pointed out the differences between the present application and prior art of record, which is reflected herein.

I. THE OBVIOUSNESS REJECTION OF CLAIMS 1, 5-7, 11-13, 17, 18, AND 24-26

On page 6 of the Office Action, claims 1, 5-7, 11-13, 17, 18, and 24-26 are currently rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,289,389 to Kikinis ("Kikinis") in view of U.S. Patent Application Publication No. 2002/0106086 to Kamiya et al. ("Kamiya"). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence,

or “secondary considerations,” of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An “expansive and flexible approach” should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Regarding claims 1, 5-7, 11-13, 17, and 18, the Examiner asserts that an embodiment of the claimed invention would have been obvious in view of Kikinis and Kamiya. Applicant respectfully disagrees. However, in order to expedite the prosecution of the present application, Applicant has cancelled claims 1, 5-7, 11-13, 17, and 18 and thus renders the obviousness rejection in view of Kikinis and Kamiya moot.

Regarding claim 24, the Examiner asserts that an embodiment of the claimed invention would have been obvious in view of Kikinis and Kamiya. In particular, the Examiner asserts that Kikinis discloses “selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets,” and “selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission

time is different from the first transmission time and the second frequency is different from the first frequency,” as presently recited (emphasis added). Applicant respectfully disagrees. Rather, Kikinis discloses that once the data packet is appropriately tagged with the appropriate IP address for identification by control software running in PC 19, which may have a resident filter in a satellite modem 21. *See, e.g.*, column 6, lines 28-32. Also, Kikinis discloses that at this time the information may also be encrypted for security and a decryption key may be sent back to the user via digital link 53 of Fig. 1 to proxy-server 29 and back through digital link 20, PSTN cloud 15, analog link 18 through analog modem 17 and into the users PC. *See, e.g.*, column 6, lines 33-37. Thus, Kikinis discloses transmission of data packets via disparate transmission modes and fails to disclose, or even suggest, “selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets,” and “selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency,” as presently recited (emphasis added).

Also, the Office Action admits that Kikinis fails to disclose, or even suggest, at least the steps of transmitting the first set of data packet “at a first transmission time via the Internet,” and transmitting the second set of data packets “at a second transmission time via the satellite delivery system, wherein the second transmission time is different from the first transmission time,” as presently recited. *See, e.g.*, Office Action page 8, second paragraph. Instead, the Examiner improperly relies on Kamiya to remedy the deficiencies of Kikinis. Specifically, the

Examiner asserts that it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the teachings of Kamiya within the system of Kikinis. Applicant respectfully disagrees. The Office Action fails to establish a prima facie case of obviousness. In fact, the Kamiya teaches away from making the proposed combination with Kikinis. Specifically, Kikinis appears to disclose a data delivery system using an Asymmetric Point to Point Protocol (APPP), wherein PPP (e.g., data link protocol used to establish a direct connection between two nodes) is used with a selective multi-link capability installed in proxy-server 29, thereby giving it an ability to select from alternative routes back to the user, based on available information at the time the decision is made. *See, e.g.*, column 5, lines 13-23. In contrast, Kamiya discloses a data delivery system using a point to multipoint delivery network suitable for delivering large quantities of data at high speed in broadband environment. *See, e.g.*, paragraph [0075]. Therefore, one having ordinary skill in the art at the time the invention was made would have no reason to combine the point to multipoint delivery network of Kamiya for the point to point data delivery network of Kikinis. The Office Action fails to provide any motivation or reason to combine these two disparate systems.

Further, Kikinis discloses that “once the encryption process has taken place and the key has been sent via land, the data packet proceeds through digital link 55 to satellite sending dish 45 where it is broadcast to home receiving dish 23.” *See, e.g.*, column 6, lines 36-41. Therefore, Kikinis discloses delivering the key and the data simultaneously via different networks. In contrast, Kamiya discloses that content and key information are delivered at different times, for example, hours or days apart. *See, e.g.*, paragraph [0023]. Therefore, one having ordinary skill in the art at the time the invention was made would have no reason to combine the transmission

of content and key at different times of Kamiya for the simultaneous transmission of content and key of Kikinis.

Moreover, Kikinis discloses an Internet delivery system having a modem-connected land based Internet connection through a public-switched telephone network (PSTN), and a satellite transmission system. *See, e.g.*, column 3, lines 46-50. In contrast, Kamiya discloses a high-speed multipoint delivery network and a storage medium of magnetically readable medium, an optically readable medium, and a semiconductor memory delivered by postal service, home delivery service, or other conventional delivery services. Therefore, one having ordinary skill in the art at the time the invention was made would have no reason to combine the postal service of Kamiya for the public switched telephone network (PSTN) of Kikinis. Accordingly, for at least the reasons stated above, the rejection of claim 24 is improper over Kikinis in view of Kamiya and should be withdrawn.

Regarding claims 25 and 26, these claims recite subject matter related to claim 24. Thus, the arguments set forth above with respect to claim 24 are equally applicable to claims 25 and 26. Accordingly, Applicant respectfully submits that claims 25 and 26 are allowable over Kikinis in view of Kamiya for the same reasons as set forth above with respect to claim 24.

In view of the foregoing, Applicant respectfully requests that the aforementioned obviousness rejection of claims 1, 5-7, 11-13, 17, 18, and 24-26 be withdrawn.

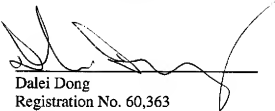
CONCLUSION

Applicant respectfully submits that the application is in condition for allowance and respectfully requests a notice of allowance for the pending claims. Should the Examiner determines that any further action is necessary to place this application in condition for allowance, the Examiner is kindly requested and encouraged to telephone Applicant's undersigned representative at the number listed below.

It is believed that no fees are due in connection with this response. However, if any fees are determined to be due, the Commissioner is hereby authorized to charge these fees to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,
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